

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Three Trees Communications, Inc.)	NAL/Acct. No. MB200741410236
)	FRN: 0011304037
Licensee of Stations WJYF(FM))	Facility I.D. No. 67098
Nashville, Georgia)	
)	
WTIF(AM))	Facility I.D. No. 67097
Tifton, Georgia)	
)	Facility I.D. No. 63841
WTIF-FM)	
Omega, Georgia)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 7, 2007

Released: February 8, 2007

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),¹ by the Chief, Media Bureau, pursuant to authority delegated under Section 0.283 of the Rules,² we find that Three Trees Communications, Inc. (the “Licensee”), licensee of Stations WJYF(FM), Nashville, Georgia; WTIF(AM), Tifton, Georgia; and WTIF-FM, Omega, Georgia (collectively, the “Stations”), apparently willfully and repeatedly violated Sections 73.2080(c)(2), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6), and 73.3526(e)(7) of the Rules by failing to comply with the Commission’s Equal Employment Opportunity (“EEO”) initiatives, self-assessment, record keeping, and public file requirements, and its broadcast public inspection file rule.³ Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of thirteen thousand dollars (\$13,000). We also impose reporting conditions on the Licensee and any successor licensee of any of the Stations to prevent future violations of these requirements.

II. BACKGROUND

2. Section 73.2080(c)(1) of the Rules requires that a broadcast licensee recruit for every full-time job vacancy in its employment unit operation. In this regard, the Rules impose, *inter alia*, the following respective obligations on such licensees:

- Section 73.2080(c)(2): engage in EEO initiatives;

¹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

² See 47 C.F.R. § 0.283.

³ See 47 C.F.R. §§ 73.2080(c)(2), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6), and 73.3526(e)(7).

- Section 73.2080(c)(3): analyze the recruitment program for the licensee's unit on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis;
- Section 73.2080(c)(5): retain records of its EEO efforts; and
- Sections 73.2080(c)(6) and 73.3526(e)(7): place its EEO public file report in the station's local public inspection file.

3. *EEO Audit.* The Bureau audited the above-captioned employment unit, which includes the Stations, for compliance with the EEO Rules.⁴ The Bureau has before it the Licensee's audit response.⁵

4. Our review of the Response shows that, during the two reporting periods at issue (June 28 through November 30, 2004, and December 1, 2004, through November 30, 2005), the Licensee failed to engage in any EEO initiatives, in violation of Section 73.2080(c)(2), and failed to place an EEO public file report in its public file, in violation of Sections 73.2080(c)(6) and 73.3526(e)(7). In addition, it failed to maintain and file EEO documentation and records as required by Section 73.2080(c)(5). Because of its lack of records, the Licensee could not adequately analyze its recruitment program, in violation of Section 73.2080(c)(3). The Licensee had 24 hires during this time period.

5. In its Response, the Licensee advises that, during the reporting periods at issue, it failed to keep adequate employment records. As a result, it has no record or documentation of its EEO efforts, including recruitment initiatives, and cannot compile the unit's EEO public file reports. The President of the Licensee explains that he did not fully understand the unit's EEO obligations because his principal profession is that of a licensed practicing physician, and not a professional broadcaster. He further indicates that the unit had fewer than five full-time employees at the time of his acquisition of the Stations on June 28, 2004, and that a consolidation of studios soon thereafter resulted in the unit's employing more than five full-time employees sometime between June 28 and October 1, 2004, thereby triggering the EEO obligations. The licensee is uncertain when it became subject to the EEO recruitment requirements but asserts it was at least by October 1, 2004. The Licensee represents that it will make all reasonable efforts to comply with the EEO rules in the future.⁶

III. DISCUSSION

6. We conclude that the Licensee failed to place an EEO public file report in its public file, in violation of Sections 73.2080(c)(6) and 73.3526(e)(7).⁷ In addition, it failed to maintain and file EEO documentation and records as required by Section 73.2080(c)(5), and failed to perform any initiatives as required by Section 73.2080(c)(2). Because of its lack of records, we find that it was not possible for the Licensee to have adequately analyzed its recruitment program to ensure that it was effective in achieving broad outreach. As indicated above, the Licensee is uncertain when the Commission's recruitment rules became applicable to its Stations but believes it was by October 1, 2004, because it made its fifth hire by that date. It failed to address its inadequate self-assessment for at least 11 months, from October 1, 2004, to September 29, 2005, in violation of Section 73.2080(c)(3).

⁴ Letter from Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, to Three Trees Communications, Inc. (Sept. 29, 2005).

⁵ Letter from Three Trees Communications, Inc. to Lewis Pulley, Assistant Chief, Policy Division, Media Bureau (Dec. 22, 2005) (the "Response").

⁶ *Id.*

⁷ The Stations did not have a website at this time. Section 73.2080(c)(6) requires a station to place its EEO public file report on its website, if it has one.

7. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁸ Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁹ The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁰ and the Commission has so interpreted the term in the Section 503(b) context.¹¹ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”¹²

8. The Commission’s *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules do not establish base forfeiture amounts for specific EEO rule violations, such as a failure to self-assess EEO performance. However, they do establish a base forfeiture amount of \$3,000 for failure to file required information, of \$1,000 for failure to maintain required records, and of \$10,000 for failure to comply with the public inspection file rule.¹³ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁴

9. As discussed *supra*, the Licensee failed to perform any EEO initiatives as required by Section 73.2080(c)(2), failed to place an EEO public file report in its public files for the Stations in violation of Sections 73.2080(c)(6) and 73.3526(e)(7), failed to maintain and file EEO documentation and records as required by Section 73.2080(c)(5), and failed to adequately analyze its recruitment program in violation of Section 73.2080(c)(3). Accordingly, based upon the facts before us, pertinent precedent¹⁵ and the factors noted above, we find that the Licensee is apparently liable for the following respective forfeiture amounts for its willful and repeated violations of the Rules: \$5,000 for its violation of Section 73.2080(c)(2); \$2,000 for its violation of Section 73.2080(c)(6); \$2,000 for its violation of Section 73.2080(c)(5); \$2,000 for its violation of Section 73.2080(c)(3); and \$2,000 for its violation of Section 73.3526(e)(7), for a total proposed forfeiture in the amount of \$13,000. Here, the Licensee demonstrated a total failure of self-assessment and a failure of any record keeping whatsoever. We will also impose reporting conditions as set forth below to ensure that the Licensee, and any successor licensee, maintains an adequate EEO program.

⁸ 47 U.S.C. § 503(b)(1)(B). *See also* 47 C.F.R. § 1.80(a)(1).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹¹ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹² 47 U.S.C. § 312(f)(2).

¹³ *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

¹⁴ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, ¶27; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

¹⁵ In *Emmis Television Licensee, LLC*, as the result of an EEO audit, we proposed an \$18,000 forfeiture for a licensee’s violations of various EEO rules, specifically Sections 73.2080(c)(1), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6)(iv), and 73.3526(e)(7). In that case, the licensee had failed to recruit for 11 (22%) of 51 openings, failed to retain or report any data on interviewees or referrals, and failed to self-assess adequately. *Emmis Television Licensee, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 13860 (2005) (forfeiture paid).

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Three Trees Communications, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for its apparent willful and repeated violation of Sections 73.2080(c)(2), 73.2080(c)(3), 73.2080(c)(5), 73.2080(c)(6), and 73.3526(e)(7) of the Commission's Rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release of this *NAL*, Three Trees Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington D.C. 20554, ATTN: Lewis Pulley, Assistant Chief, Policy Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁶

16. IT IS FURTHER ORDERED that Three Trees Communications, Inc. and each successor licensee of any or all of Stations WJYF(FM), Nashville, Georgia; WTIF(AM), Tifton, Georgia; and WTIF-FM, Omega, Georgia, submit to the Federal Communications Commission, Media Bureau, EEO Staff, an original and one (1) copy of the following information on February 1, 2008; February 1, 2009; and February 1, 2010, for its employment unit:

(a) the unit's most recent EEO public file report;

(b) the total number of interviewees for each full-time vacancy for the preceding year and the referral source for each interviewee; and

(c) dated copies of all advertisements, bulletins, letters, faxes, e-mails, or other communications announcing each full-time vacancy for the preceding year.

¹⁶ See 47 C.F.R. § 1.1914.

17. IT IS FURTHER ORDERED that, pursuant to Section 73.3526(e)(10) of the Commission's Rules, Three Trees Communications, Inc. shall place a copy of this *NAL* in its unit's public inspection files.

18. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Three Trees Communications, Inc., 113 East College Avenue, Ashburn, Georgia 31714, and to its counsel, Gary Smithwick, Esquire, Smithwick and Belendiuk, 5028 Wisconsin Avenue, NW, Suite 301, Washington DC 20016.

FEDERAL COMMUNICATIONS COMMISSION

Monica Shah Desai
Chief, Media Bureau